

## Human Rights Brief

---

Volume 17 | Issue 3

Article 13

---

2010

# Center News/Faculty and Staff Updates

Human Rights Brief

Follow this and additional works at: <http://digitalcommons.wcl.american.edu/hrbrief>



Part of the [Legal Education Commons](#)

---

### Recommended Citation

Human Rights Brief. "Center News/Faculty and Staff Updates." Human Rights Brief 17, no.3 (2010): 72-74.

This Column is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Human Rights Brief by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact [fbrown@wcl.american.edu](mailto:fbrown@wcl.american.edu).

## CENTER NEWS/FACULTY AND STAFF UPDATES

### CENTER NEWS

#### CENTER'S PROGRAM ON HUMAN TRAFFICKING AND FORCED LABOR HOSTS CONFERENCE EXAMINING OBAMA ADMINISTRATION'S APPROACH TO COMBATING TRAFFICKING AND FORCED LABOR

The Center for Human Rights and Humanitarian Law's Program on Human Trafficking and Forced Labor, along with the International Labor Rights Forum and the Solidarity Center (AFL-CIO), hosted a conference on March 24 entitled "Combating Human Trafficking and Forced Labor: The Obama Administration's Global Agenda." The conference focused on current efforts to curb the circulation of goods made with forced or trafficked labor within the United States; gaps in legal protections for domestic workers and the possibility of improving their work conditions in the new International Labor Organization convention on domestic workers; and new strategies for ensuring that programs and policies are evidence based and focused on reducing the numbers of victims and protecting the rights of victims. A rich discussion was held with **Ana Avendano** (Assistant to the President for Immigration and Community Action, AFL-CIO), **Carol Pier** (Associate Deputy Undersecretary, Bureau of International Labor Affairs, U.S. Labor Department), **Antonia Pena** (domestic worker and leader at *Casa de Maryland*, a non-profit organization providing legal services to immigrants), **Jane Sigmon** (Senior Coordinator for Programs, Office to Monitor and Combat Trafficking in Persons, U.S. State Department), **Matt Friedman** (Regional Programme Manager, UN Inter-agency Project on Human Trafficking (Thailand, China, Burma, Laos, Cambodia and Vietnam)), **Kathy Blakeslee** (Director, Women in Development, USAID), **Marcia Eugenio** (Director, Office of Child Labor, Forced Labor, and Human Trafficking, Bureau of International Labor Affairs, U.S. Labor Department), **Christian Levesque** (Conrad & Scherer, LLP), and **Katerina Karousos** (Acting Chief, Multilateral Programs Unit, Office of International Affairs,

Immigration and Customs Enforcement, U.S. Department of Homeland Security). **Neha Misra** (Solidarity Center, AFL-CIO), **Ann Jordan**, (Program Director, Center's Program on Human Trafficking and Forced Labor), and **Bama Athreya** (International Labor Rights Forum) served as moderators.

#### U.S.-ISRAEL CIVIL LIBERTIES LAW FELLOWS PROGRAM CELEBRATES 25 YEARS; PROFESSOR HERMAN SCHWARTZ HONORED

To celebrate the 25th anniversary of the US-Israel Civil Liberties Law Fellows Program, the Washington College of Law (WCL) hosted a panel discussion on March 22 entitled, "Celebrating 25 Years of the US-Israel Civil Liberties Law Fellows Program: The Future of Human Rights in Israel." Moderated by Center for Human Rights and Humanitarian Law Executive Director **Hadar Harris**, this dynamic discussion featured four past graduates of the program: **Joshua Schoffman** (former Deputy Attorney General of Israel), **Sawsan Zaher** (staff attorney, Adalah), **Moshe Cohen-Eliya** (Senior Lecturer at Ramat Gan Law School, and **Durgham Saif** (attorney and former faculty at Haifa University's Arab Minority Clinic). A moving dinner honoring longtime WCL Professor **Herman Schwartz**, followed the roundtable. For more on the Program and a profile of Professor Schwartz, please see the article in this issue.

#### CENTER HOSTS CONFERENCE ON CUSTOMARY (TRADITIONAL) LAW

On February 15, the Center for Human Rights and Humanitarian Law, the *Human Rights Brief*, and the WCL International Human Rights Law Clinic hosted an all-day conference entitled, "Custom, Law and Tradition: Alternative Legal Systems and Their Impact on Human Rights." The conference explored the underrepresented issue of the intersection of customary law and human rights in traditional societies. Panelists discussed different perspectives on customary law in transitional and aboriginal societies; cultural codes

of conduct that constitute customary law; the place of legal dualism in a modern constitutional state; intersections of customary law and gender, particularly with respect to land tenure rights; and the inclusion of customary law in national and regional courts. **Sanele Sibanda**, lecturer at the University of Witwatersrand in South Africa, delivered the keynote speech on whether modern conceptions of democracy and human rights provide a role for customary law in advancing human rights or enriching the constitutional state. Other speakers included Professor **Francis Ssekandi** (Columbia Law School), **Caroline Sage** (World Bank), Professor **Christine Zuni Cruz** (University of New Mexico), Professor **Ezra Rosser** (WCL), Professor **Rachel Rebouché** (WCL), **Hadar Harris** (Center for Human Rights and Humanitarian Law), and Professor **Todd Eisenstadt** (American University School of Public Affairs). Please see the article by Sanele Sibanda in this issue for more information.

#### WCL/UNIVERSITY OF PESHAWAR COLLABORATIVE EXCHANGE AND CAPACITY BUILDING PROGRAM: UP PROGRAM DIRECTOR VISITS CENTER, LEADS DISCUSSION ON GENDER AND HUMAN RIGHTS IN PAKISTAN

As part of the Washington College of Law-University of Peshawar Collaboration Program, administered through the Center for Human Rights and Humanitarian Law, Professor **Nasir Khattak** from the University of Peshawar (UP), Pakistan, visited the Center to discuss the project and its next steps. The Collaboration Program, which aims to build the capacity of UP faculty members in the areas of human rights and gender studies, has already brought four UP faculty members to pursue their Ph.D.s throughout American University (AU). Two more fellows are expected to come to AU in fall 2010. In addition, on March 16, Professor Khattak spoke to a packed auditorium at WCL about "The Challenges of Supporting Gender and Human Rights Education in Peshawar." He discussed the activities and goals of the UP's ground-breaking Human Rights

Centre and Gender Studies Department — the first of their kind in Pakistan. Professor Khattak commented on the difficult realities of educating about gender and human rights in the volatile North-West Frontier Province, an area that has experienced rampant violence and felt the pressures of Talibanization.

#### EXPERIENTIAL LEARNING PROJECT FOCUSES ON EDUCATION AND IMMIGRANT CHILDREN

The Center's Student Advisory Board (SAB) sponsored a four-session Experiential Learning Project (ELP) on "Education and Immigrant Children." The ELP is an annual SAB-run project that explores a particular human rights issue from various angles by taking students outside the classroom on site visits in the Washington, D.C. area in a series of four sessions and follow-up facilitated reflective meetings. Despite a significant delay in the project due to this winter's epic snowstorms, the students attended sessions during which they explored the process and experience of immigration, English-as-a-second-language programs and acculturation, and "civic" education through a series of visits to the Center for Social Justice Research, Teaching and Service at Georgetown University; Education Strengthens Families Public Charter School; and Liberty's Promise, a non-profit organization in D.C. that works with low-income immigrant youth. In addition, participants visited the Northern Virginia Juvenile Detention Center to learn about and discuss the issues surrounding detention of undocumented children. Both J.D. and LL.M. students participated in the initiative.

#### CENTER HOSTS DISCUSSION ON TRANSITIONAL JUSTICE IN NEPAL

On March 3, the Center hosted a lunch-time discussion with **Dr. Gopal Krishna Siwakoti** entitled "Peace Dividend and Transitional Justice in Nepal." Dr. Siwakoti is the president of Inhured International, an international human rights organization in Kathmandu. A former political prisoner and a torture survivor, Dr. Siwakoti, along with other colleagues, rejuvenated an amnesty movement in the early 1980s. He has been courageously fighting against the tyrannical *panchayat* system in Nepal and closely monitoring the decade-long armed

conflict as well as the atrocities of the dictatorial royal regime under exceptionally difficult circumstances. As International Advisor of the Hague Appeal for Peace, his contribution in the human rights and peace movement is also manifested in the ongoing transition and peace process in Nepal. During this event, Dr. Siwakoti shared his experience in seeking justice and peace in Nepal and engaged in a fascinating discussion with the WCL community.

#### PROGRAM ON HUMAN TRAFFICKING AND FORCED LABOR HOLDS DISCUSSION ON HUMAN TRAFFICKING IN THE MEKONG DELTA REGION

On March 22, the Program held a lunch-and-learn session on "Human Trafficking in the Mekong Delta Region" with **Matt Friedman** (Regional Programme Manager, UN Inter-agency Project on Human Trafficking (Thailand, China, Burma, Laos, Cambodia, and Vietnam)). Friedman presented a comprehensive overview of the innovative work being done by the United Nations to document cases, locate traffickers, coordinate intergovernmental responses and foster new approaches in the region.

#### CENTER WELCOMES NEW STUDENT ADVISORY BOARD FOR 2010-2011

The Center for Human Rights and Humanitarian Law finalized the new members of its 2010-2011 Student Advisory Board (SAB). The SAB is a group of highly qualified and committed students interested in human rights and humanitarian law who work closely with the Center over the course of a year. The SAB focuses on assisting the Center in developing programming that reflects student interests and priorities. SAB members also participate in specialized skills-development workshops and meet weekly with Center Executive Director Hadar Harris. The 2010-2011 SAB members are: **Ashly Hinmon, Maanasa Reddy, Shubra Ohri, Andrew Maki, Anna Maitland, and Bhavani (Bhanu) Raveendran.**

#### CENTER'S ASSISTANT DIRECTOR AND WCL STUDENTS BRING NIAGARA INTERNATIONAL MOOT COURT CUP TO WCL

Four WCL students, **Ari Levin, Lindsey Siegel, Nutal Patel, and Sara Kang,**

coached by the Center's Assistant Director, **Matias Hernandez**, won the Niagara International Moot Court Competition, an international law competition that this year drew fifteen law schools from Canada and the United States. The team from WCL also won the following awards: Best Team Argument — Applicant (Nutan Patel and Ari Levin), Runner-Up Team Memorial — Respondent (Lindsey Siegel and Sara Kang), 4th Place Advocate (Sara Kang), and 5th Place Advocate (Lindsey Siegel).

#### FACULTY AND STAFF UPDATES

**Claudio Grossman** is the WCL Dean and a Co-Director of the Center for Human Rights and Humanitarian Law. In February, Dean Grossman served as moderator and commentator for a WCL event on "Special Mandates on Freedom of Expression: Ten Key Threats to this Fundamental Right," which included panelists Catalina Botero (Special Rapporteur on Freedom of Expression, Inter-American Commission on Human Rights), Frank La Rue (Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, OHCHR), and Toby Mendel (Senior Legal Counselor, Article 19 (Global Campaign for Freedom of Expression)). The following month, Dean Grossman was awarded the 2010 Henry W. Edgerton Civil Liberties Award from the American Civil Liberties Union of the National Capital Area at the 47th Bill of Rights Awards Dinner, in recognition of exceptional lifetime achievements related to the advancement and defense of human rights and civil liberties. He also co-organized a full-day conference with Amnesty International on "Strengthening the Prohibition Against Torture: The Evolution of the UN Committee against Torture," serving as moderator for the panel on "Ensuring Reparations for Victims of Torture and Other Ill-Treatment" and introducing the keynote speaker, Assistant Secretary of State for the Bureau of Democracy, Human Rights and Labor, the Honorable Michael Posner.

Dean Grossman also participated in the "Thirteenth Annual Hispanic Law Conference," sponsored by WCL's Latino/a Law Students' Association, WCL's Latino/a Alumni Association, the Hispanic National Bar Association, and the Hispanic Bar Associations of the District of Columbia, Maryland, and Virginia, moderating a panel

on “Immigration Reform: A Dialogue.” Additionally, Dean Grossman participated in a faculty colloquium at the University of Pretoria in South Africa, presenting a lecture to the Human Rights LL.M. Program regarding the prohibition of torture under international law and contributing to a Roundtable on Impact Litigation at the Constitutional Court of South Africa, which was co-organized by the University of Pretoria’s Centre of Human Rights and the South African Institute for Advanced Constitutional Studies. Dean Grossman also served as a luncheon speaker for “Litigation before International Human Rights Tribunals: Law School Opportunities and Existing Initiatives in the Americas,” which brought together more than 24 institutions from South, Central, and North America, and was co-sponsored by Utrecht University and the Network of Latin American Public Interest Clinics. That same month, Dean Grossman participated in a Meeting of Experts on Freedom of Expression in the Americas in Washington, D.C., co-sponsored by the United Nations and the Organization of American States, moderating a panel on “Vulnerable Groups, Freedom of Opinion and Expression, and the Fight against Discrimination.” He also participated in a panel discussion on “Freedom of Expression in Venezuela: The Work of Student Activists, Journalists, Human Right Defenders and the International Community,” which was organized by Venezuela Perspectives in Washington, D.C. Dean Grossman moderated a special session on “New Voices” in international law at the 104th Annual Meeting of the American Society of International Law in Washington, D.C.

In April, Dean Grossman spoke on a “Deans’ Roundtable on the International

Legal System and its Place in the New Millennium” at the American Bar Association (ABA) Section of International Law Spring Meeting in New York City. He also participated in the Miami Conference on “Practicing Law in an Interconnected World: Exploring Trends and Facilitating Dialogue,” sponsored by WCL in cooperation with AU’s Kogod School of Business, and served as the facilitator of the discussion group on human rights and as a discussant for the final session exploring the next steps in promoting interconnectedness in law practice. Recent media interviews include one on *Oppenheimer Presenta* regarding the case of Guillermo Farinas, a dissident Cuban journalist on a hunger strike to demand the freedom of 26 political prisoners in ill health.

**Juan E. Méndez** is a Visiting Professor of Law at WCL. On April 1 and 2, he visited the campus of the University of Illinois at Urbana-Champaign where he gave a lecture on “Human Rights Trials and Truth Commission: What the United States can learn from Latin America,” as part of their prestigious, campus-wide MillerComm series. He also appeared on a radio talk show on the campus NPR affiliate on the issue, and gave two presentations at the law school. One of them was part of a conference called “What Would Lincoln Do,” in which Méndez spoke on a panel about participation and access to justice.

On March 25, 2010, Méndez was awarded the Goler T. Butcher Medal at 104th Annual Meeting of the American Society of International Law in Washington, D.C. In addition, on April 14, Méndez received the Rafael Lemkin Award for Contributions to the Prevention of Genocide, presented by the Auschwitz Institute for Peace and Reconciliation at a conference jointly

sponsored by the Institute in Buenos Aires and the Foreign Ministry of Argentina. Méndez participated by video conference.

**Diego Rodríguez-Pinzón** is a Professorial Lecturer in Residence at WCL and Co-Director of the Academy on Human Rights and Humanitarian Law. On March 5, 2010, he taught a course on the Inter-American Commission on Human Rights as part of the masters program at Facultad de Derecho, Universidad Sergio Arboleda (Bogotá, Colombia). On March 23, he gave a presentation on “The Inter-American Human Rights System and Transitional Processes” at a roundtable seminar, “Transitional Jurisprudence and the European Court on Human Rights: Comparative Perspectives,” at the Transitional Justice Institute at the University of Ulster, (Belfast, Ireland). On April 9, Rodríguez-Pinzón was interviewed on CNN Spanish regarding the retirement of Justice Stevens from the U.S. Supreme Court and the political and legal importance of the upcoming selection and confirmation process.

Rodríguez-Pinzón also delivered keynote speeches at two conferences. On February 25, 2010, he addressed “Globalization and Human Rights” as keynote speaker for the International Congress on Constitutional Law, “*Retos del constitucionalismo en contextos de pobreza*,” at the Universidad de Nariño (Pasto, Colombia). In addition, he delivered a keynote entitled “Human Rights, and Humanitarian Law in the Hemisphere: Terrorism, Armed Forces and Public Security” at the Inter-American Defense College (Washington, D.C.) seminar, “Human Rights and Humanitarian Law and their Globalizing Influence in the Context of the Inter-American System” on March 17.

**HRB**



# ENDNOTES: The Need for Debt Relief: How Debt Servicing Leads to Violations of State Obligations under the ICESCR *continued from page 9*

- 27 MATTHEW C.R. CRAVEN, *THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS: A PERSPECTIVE ON ITS DEVELOPMENT* 106 (Oxford Univ. Press 1995).
- 28 Clair Apodaca, *Measuring Women's Economic and Social Rights Achievement*, 20 HUM. RTS. Q. 139, 145 (1998).
- 29 ECOSOC, Comm. on Human Rights, *The Limburg Principles on the Implementation of the International Covenant on Economic Social and Cultural Rights*, U.N. Doc. E/CN.4/1987/17 (Jan. 8, 1987) [hereinafter *The Limburg Principles*].
- 30 *Id.* ¶ 21 ("The obligation 'to achieve progressively the full realization of the rights' requires States parties to move as expeditiously as possible towards the realization of the rights. Under no circumstances shall this be interpreted as implying for States the right to defer indefinitely efforts to ensure full realization . . . all States parties have the obligation to begin immediately to take steps to fulfill their obligations under the Covenant.").
- 31 *Id.* ¶ 2.
- 32 Philip Alston & Gerard Quinn, *The Nature and Scope of States Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights*, 9 HUM. RTS. Q. 156, 178-179 (1987).
- 33 *Id.* at 179.
- 34 *The Limburg Principles*, *supra* note 29, ¶ 26.
- 35 *General Comment No. 3*, *supra* note 20, ¶ 13.
- 36 Eric A. Friedman, *Debt Relief in 1999: Only One Step on a Long Journey*, 3 YALE HUM. RTS. & DEV. L.J. 191, 198 (2000).
- 37 Sabine Michalowski, *Sovereign Debt and Social Rights – Legal Reflections on a Difficult Relationship*, 8:1 HUM. RTS. L. REV. 35 (2008).
- 38 Friedman, *supra* note 36, at 198.
- 39 *Id.*
- 40 Robert E. Robertson, *Measuring State Compliance with the Obligation to Devote the "Maximum Available Resources" to Realizing Economic, Social and Cultural Rights*, 16 HUM. RTS. Q. 693, 697 (1994).
- 41 *Id.* at 701-703.
- 42 *Id.* at 700.
- 43 Robertson, *supra* note 40, at 701.
- 44 *Id.* at 698.
- 45 *Id.* at 698-99.
- 46 Robertson, *supra* note 40, at 701-02 (emphasis added).
- 47 Alston & Quinn, *supra* note 32, at 180-81.
- 48 U.N. DEVELOPMENT PROGRAM, *HUMAN DEVELOPMENT REPORT 4* (Oxford Univ. Press 1990).
- 49 *Id.*
- 50 *The Limburg Principles*, *supra* note 29, ¶ 28.
- 51 CRAVEN, *supra* note 27, at 137.
- 52 On the "minimum core obligations" approach, *see generally*, B.A. Andreassen, T. Skallness, A. Smith & H. Stokke, *Assessing Human Rights Performance in Developing Countries: The Case for a Minimum Threshold Approach to the Economic and Social Rights*, in *HUMAN RIGHTS IN DEVELOPING COUNTRIES* 342 (B.A. Andreassen & A. Eide eds., 1988).
- 53 *The Limburg Principles*, *supra* note 29, ¶ 25.
- 54 *General Comment No. 3*, *supra* note 20, ¶ 10 ("On the basis of the extensive experience gained by the Committee, as well as by

the body that preceded it, over a period of more than a decade of examining States parties' reports the Committee is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. . . . If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d'être*.").

- 55 Audrey Chapman & Sage Russell, *Introduction*, in *CORE OBLIGATIONS: BUILDING A FRAMEWORK FOR ECONOMIC, SOCIAL AND CULTURAL RIGHTS* 14 (Audrey Chapman & Sage Russell eds., 2002).
- 56 Fons Coomans, *In Search of the Core Content of the Right to Education*, in *CORE OBLIGATIONS: BUILDING A FRAMEWORK FOR ECONOMIC, SOCIAL AND CULTURAL RIGHTS* 217 (Audrey Chapman & Sage Russell eds., 2002).
- 57 *General Comment No. 3*, *supra* note 20, ¶ 10 (emphasis added).
- 58 *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, 20 HUM. RTS. Q. 691-705 (1998). The guidelines were formulated by a group of more than thirty experts who met in Maastricht, the Netherlands in January 1997. The objective of the group was to expound on the Limburg Principles as regards the nature and scope of violations of rights in the ICESCR and to adopt appropriate responses and remedies.
- 59 *Graph 1* was computed using raw data from the World Bank, *WDI, GDF & ADI Online Databases*, available at: <http://web.worldbank.org/WBSITE/EXTERNAL/DATASTATISTICS/0,,contentMDK:20398986~menuPK:64133163~pagePK:64133150~piPK:64133175~theSitePK:239419,00.html>; and the United Nations Educational, Scientific and Cultural Organization [UNESCO] Institute for Statistics, *Frequently Requested Statistics*, available at [http://stats.uis.unesco.org/unesco/TableViewer/document.aspx?ReportId=199&IF\\_Language=eng](http://stats.uis.unesco.org/unesco/TableViewer/document.aspx?ReportId=199&IF_Language=eng).
- 60 *Graph 2* was computed using raw data from the World Bank, *WDI, GDF & ADI Online Databases*, <http://web.worldbank.org/WBSITE/EXTERNAL/DATASTATISTICS/0,,contentMDK:20398986~menuPK:64133163~pagePK:64133150~piPK:64133175~theSitePK:239419,00.html>; and the World Health Organization, *Data and Statistics*, [www.who.int/research/en/](http://www.who.int/research/en/).
- 61 ECOSOC, CESCR, *General Comment No. 4, the Right to the Highest Attainable Standard of Health*, ¶ 52, U.N. Doc. E/C.12/2000/4 (May 12, 2000); *See also*, ECOSOC, CESCR, *General Comment No. 15, the Right to Water*, ¶ 44(c), U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003).
- 62 ECOSOC, CESCR, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant, Concluding observations of the Committee on Economic, Social and Cultural Rights*, ¶ 14, U.N. Doc. E/C.12/1/Add.31 (Dec. 10, 1998).
- 63 Robertson, *supra* note 40, at 711-712.
- 64 *Id.* at 712.
- 65 MAGDALENA SEPULVEDA, *THE NATURE OF THE OBLIGATIONS UNDER THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS* 323 (Intersentia 2003).
- 66 *Id.*
- 67 ECOSOC, CESCR, *Report on the Tenth and Eleventh Sessions*, ¶ 181, U.N. Doc. E/1995/22 (May 20, 1994).

<sup>68</sup> ECOSOC, CESCR, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant, Concluding observations of the Committee on Economic, Social and Cultural Rights*, ¶ 30, U.N. Doc. E/C.12/1/Add.23 (June 16, 1998).

<sup>69</sup> *Id.* ¶ 126.

<sup>70</sup> ICESCR, *supra* note 1, at art. 4.

<sup>71</sup> ECOSOC, CESCR, *Implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment No. 13*, ¶ 45, U.N. Doc. E/C.12/1999/10 (Dec. 8, 1999) (“There is a *strong presumption of impermissibility* of any retrogressive measures taken in relation to the right to education, as well as other rights enunciated in the Covenant. If any deliberately retrogressive measures are taken, the State Party has the burden of proving that *they have been introduced after the most careful consideration of all alternatives and that they are fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the State Party’s maximum available resources.*” (emphasis added)).

<sup>72</sup> HUMAN RIGHTS WATCH, *FAILING OUR CHILDREN: BARRIERS TO THE RIGHT TO EDUCATION* 6 (2005).

<sup>73</sup> *Id.*

<sup>74</sup> See, e.g., ECOSOC, CESCR, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant, Concluding observations of the Committee on Economic, Social and Cultural Rights*, ¶ 17, U.N. Doc. E/C.12/1993/6 (June 3, 1993).

<sup>75</sup> ECOSOC, CESCR, *Concluding observations on Chile*, ¶ 25, U.N. Doc. E/C.12/1988/SR.13 (Feb. 8, 1988).

<sup>76</sup> BRIDGET C.A. TOEBES, *THE RIGHT TO HEALTH AS A HUMAN RIGHT IN INTERNATIONAL LAW* 295 (Intersentia 1999).

<sup>77</sup> BERTRAND G. RAMCHARAN, *CONTEMPORARY HUMAN RIGHTS IDEAS* 92-96 (Routledge 2008).

<sup>78</sup> JEFFREY SACHS, *THE END OF POVERTY: ECONOMIC POSSIBILITIES FOR OUR TIME* 212 (Penguin Books 2005).

<sup>79</sup> *Id.*

<sup>80</sup> There seems to be a clear-cut division of labour among three international mechanisms created to work out solutions for developing countries’ external debts: (1) the Bank Advisory Committee, also referred to as the “London Club,” (2) the Heavily Indebted Poor Countries Initiative, and (3) the “Paris Club” of creditor countries. Private external debts are dealt with in the London Club process, while public external debts are worked out in the HIPC Initiative (for low-income developing countries meeting predetermined thresholds) and in the Paris Club (for middle-income countries and low-income countries that do not satisfy HIPC thresholds). See Villaroman, *supra* note 3.

<sup>81</sup> Press Release, UNCTAD, *Debt Burdens in Developing World are Mounting under Pressure of Global Financial Crisis*, UNCTAD Chief Says (Nov. 9, 2009), available at <http://www.unctad.org/TEMPLATES/Webflyer.asp?docID=12381&intlItemID=1634&lang=1>.

<sup>82</sup> UNCTAD, *Least Developed Countries Report 2009: the State and Development Governance*, available at [http://www.unctad.org/en/docs/ldc2009\\_en.pdf](http://www.unctad.org/en/docs/ldc2009_en.pdf).

<sup>83</sup> Michael Waibel, *Opening Pandora’s Box: Sovereign Bonds in International Arbitration* 101 AM. J. INT’L. L. 711, 711-12 (2007).

<sup>84</sup> Anne Pettifor, *Resolving International Debt Crises Fairly*, in *DEALING FAIRLY WITH DEVELOPING COUNTRY DEBT* 326 (Christian Barry, Barry Herman and Lydia Tomitova eds., 2007).

<sup>85</sup> The World Bank, *Steps of the HIPC Initiative*, available at <http://go.worldbank.org/76G2TJJO30>.

<sup>86</sup> Charles Mutasa, *Operationalizing Debt Sustainability*, UNCTAD/DMFAS 5<sup>th</sup> Inter-regional Debt Management Conference, available at <http://r0.unctad.org/dmfas/docs/mutasa.pdf>.

<sup>87</sup> Pettifor, *supra* note 84, at 327.

<sup>88</sup> UNCTAD, *supra* note 82, at 28, 33.

<sup>89</sup> ROMILLY GREENHILL, *THE UNBREAKABLE LINK – DEBT RELIEF AND THE MILLENNIUM DEVELOPMENT GOALS*, (New Economics Foundation and Jubilee Debt Campaign 2002), available at <http://mdgr.undp.sk/PAPERS/The%20unbreakable%20link%20-%20Debt%20relief%20and%20MDGs.pdf>.

## ENDNOTES: Bringing Human Rights Home: The DC Right to Housing Campaign *continued from page 14*

<sup>31</sup> MADELEINE R. STONER, *THE CIVIL RIGHTS OF HOMELESS PEOPLE: LAW, SOCIAL POLICY, AND SOCIAL WORK PRACTICE* 35 (Walter de Gruyter, Inc. 1995).

<sup>32</sup> *Atchison v. Barry*, No. 11976-CA-88 (D.C. Super. Ct. 1989) (Harriett R. Taylor, J.).

<sup>33</sup> WLCH, *Timeline of WLCH and Homelessness in DC*, <http://www.legalclinic.org/about/history.asp> (last visited Apr. 18, 2010) [hereinafter WLCH Timeline].

<sup>34</sup> *Washington Legal Clinic for the Homeless v. Barry*, No. 96-7066 (D.C. Cir. 1997), available at <http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=dc&navby=case&no=967066a>.

<sup>35</sup> D.C. Emergency Overnight Shelter Amendment Act of 1990, D.C. Law 8-197 (July 12, 1990); see also *WLCH v. Barry*, citing District of Columbia Emergency Overnight Shelter Amendment

Act of 1990, D.C. Law 8-197, 37 DCR 4815 (1990) (codified as D.C. Code Ann. § 3-206.9(a) (1994 Repl.); D.C. Code Ann. § 3-609 (1994 Repl.)).

<sup>36</sup> D.C. Law 8-197 (repealing D.C. Code § 3-602.1 on emergency shelter and support services).

<sup>37</sup> Maria Foscarnis, *Homelessness, Litigation and Law Reform Strategies: A United States Perspective*, 10:2 Austl. J. of Hum. Rts. 6 (2004), available at <http://www.austlii.edu.au/au/journals/AJHR/2004/6.html>.

<sup>38</sup> Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 10, 1948).

<sup>39</sup> International Covenant on Economic, Social and Cultural Rights [ICESCR], Dec. 16, 1966, 933 U.N.T.S. 3.

<sup>40</sup> United Nations Conference on Human Settlements (Habitat II), A/Conf.165/14, available at <http://www.un.org/Conferences/habitat/eng-pres/3/habist25.htm>. For more information, see Press Release, City Summit Ends with Leaders' Commitment to Improve Living Standards, U.N. Doc. HAB/IST/25, June 15, 1996, available at <http://www.un.org/Conferences/habitat/eng-pres/3/habist25.htm>.

<sup>41</sup> The concept of the human right to housing has been further articulated and ratified by more than 150 countries through the ICESCR. France, Scotland, South Africa and Ecuador have adopted the right to housing in their constitutions or legislation.

<sup>42</sup> International Convention on Civil and Political Rights [ICCPR] arts. 12, 17, 21, Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

<sup>43</sup> International Convention on the Elimination of All Forms of Racial Discrimination art. 5, Dec. 21, 1965, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969).

<sup>44</sup> Eric Tars, Waiting for Someone to Lead by Example, National Center on Homelessness and Poverty, Mar. 6, 2010, <http://homelessnesslaw.wordpress.com/2010/03/06/waiting-for-someone-to-lead-by-example/> (quoting the formal U.S. statement by Douglas M. Griffiths, Deputy Permanent Representative of the U.S. Mission to the United Nations, in response to the UN Special Rapporteur's Report: "While the U.S. has not ratified the International Covenant on Economic, Social & Cultural Rights, we have made a political commitment to a human right related to housing in the Universal Declaration of Human Rights (UDHR). Although U.S. law does not treat adequate housing as a legally enforceable right, our law does provide certain legally enforceable rights and protections related to housing such as anti-discrimination requirements and provision of adequate housing to persons in government custody.").

<sup>45</sup> For more information, see Center for Economic and Social Rights, <http://www.cesr.org> (last visited Apr. 15, 2010).

<sup>46</sup> The Housing Act of 1949, 42 U.S.C.A. § 1441 (West 2010).

<sup>47</sup> The Fair Housing Act, 42 U.S.C.A. § 3 601 (West 2010).

<sup>48</sup> Homeless Assistance Act, 42 U.S.C.A. § 11301 (West 2010).

<sup>49</sup> U.S. CONST. amend. V ("no person shall be... deprived of life, liberty, or property, without due process of law").

<sup>50</sup> U.S. CONST. amend. XIV ("nor shall any State deprive any person of life, liberty, or property, without due process of law").

<sup>51</sup> *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970).

<sup>52</sup> *Id.*

<sup>53</sup> *Escalera v. New York Housing Authority*, 425 F.2d 853, 861 (2d Cir. 1970); *Caulder v. Durham Housing Authority*, 433 F.2d 998, 1002-03 (4th Cir. 1970) (noting that "[t]he 'privilege' or the 'right' to occupy publicly subsidized low-rent housing seems to us to be no less entitled to due process protection than entitlement to welfare benefits which were the subject of decision in *Goldberg* or the other rights and privileges referred to in *Goldberg*"); *Joy v. Daniels*, 479 F.2d 1236, 1242 (4th Cir. 1973) (due process guarantees prohibited arbitrarily ejecting low-income residents from a quasi-public housing unit).

<sup>54</sup> *Goldberg*, *supra* note 37, at 264.

<sup>55</sup> 490 F. Supp. 941, 945-46 (D.D.C. 1980). In the mid-1990s, the WLCH sued the District of Columbia arguing that the D.C. government's shelter policies violated the Fifth Amendment due process and equal protection guarantees by imposing upon applicants unnecessary and burdensome documentation requirements and by failing to afford disappointed applicants timely hearings.

<sup>56</sup> *Id.* at 946-47.

<sup>57</sup> *Id.* at 947. On appeal, the D.C. Circuit upheld the District Court's findings that notice and an opportunity to present written comments was sufficient to satisfy any procedural protection required and did not reach the issue of whether there was a due process right at stake. See *Williams v. Barry*, 708 F.2d 789, 792 (D.C. Cir. 1983).

<sup>58</sup> *Callahan v. Carey*, No. 79-42582 (Sup. Ct. N.Y. County, Cot. 18, 1979); *Eldredge v. Koch*, 98 A.D. 2d 675 (1983); *McCain v. Koch*, 70 N.Y. 2d 109, 113-14 (1987).

<sup>59</sup> *Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel*, 67 N.J. 151, 175-80 (1975); *Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel*, 92 N.J. 205 (1983).

<sup>60</sup> *Washington Legal Clinic for the Homeless v. Barry*, *supra* note 34.

<sup>61</sup> In 2005, the Homeless Services Reform Act established an interagency council on homelessness that is composed of the administrative heads of various D.C. governmental departments along with four-to-ten shelter service providers, two-to-five formerly homeless or homeles persons, and two-to-five advocates of the homeless population. The HSRA does not include a right to emergency shelter; however, it does include the right to shelter during severe weather.

<sup>62</sup> Since the D.C. Court of Appeals' decision in 1997, however, there have been numerous court rulings around the world finding a right to housing and/or shelter. See, e.g., *Government of the Republic of South Africa & Ors v Grootboom & Ors* 2000 (11) BCLR 1169 (CC) (S. Afr.) (finding a violation of the right to housing and ordering the state to "devise, fund, implement and supervise measures to provide relief to those in desperate need"); *Victoria (City) v. Adams*, [2009] BCCA 563 (Can.); [2008] BCSC 1363 (Can.) (first case in Canada to recognize the right to adequate housing as a component of the right to life, liberty and security of the person in the Canadian Charter of Rights and Freedoms, traditionally a more "negative rights" framework like that of the U.S. Constitution). Particularly noteworthy, at least in the Canadian case, is that in the aftermath of the decision, the City of Victoria added approximately eighty new shelter beds and implemented a new policy on temporary shelters to comply with the Court's ruling, but advocates also used the ruling to mobilize in support of federal legislation to protect the right to adequate housing. Perhaps litigation strategies should be reconsidered, particularly as one tool in a broader advocacy strategy, in light of these rulings.

<sup>63</sup> See National Law Center on Homelessness and Poverty, <http://www.nlchp.org/program.cfm?prog=1> (last visited Apr. 15, 2010).

<sup>64</sup> Human Rights Act of 1977, D.C. Code § 2-1402.21(a), available at [http://www.dashdc.org/2\\_1402\\_21.pdf](http://www.dashdc.org/2_1402_21.pdf).

<sup>65</sup> WLCH, *supra* note 2.

<sup>66</sup> Student attorneys in the International Human Rights Law Clinic serve as members of the Steering Committee and the Policy / Lobbying Workgroup, and have undertaken the task of drafting the accountability legislation.

<sup>67</sup> AFSC, DC Right to Housing Campaign: Statement of Principles, <http://www.afsc.org/dc/ht/d/sp/i/85855/pid/85855> (last visited Apr. 15, 2010).

<sup>68</sup> For an overview of the Campaign's goals, see American Friends Service Committee, DC Right to Housing Campaign, <http://www.afsc.org/dc/ht/d/sp/i/83261/pid/83261> (last visited Apr. 15, 2010).

<sup>69</sup> For more information, see National Law Center on Homelessness and Poverty, <http://www.nlchp.org/>.

<sup>70</sup> See Foscarinis, *supra* note 37.



## ENDNOTES: The Right to Life Is the Right to Food: *People's Union for Civil Liberties v. Union of India & Others continued from page 18*

relevant department or ministry is responsible for implementation. Should the order be addressed to the central government, however, the Attorney General will serve as representative for the Indian government. See *People's United for Civil Liberties v. Union of India and Others*, writ petition (civil) 196 of 2001 [hereinafter *PUCL writ petition 196/2001*] (Interim Order of Nov. 28, 2001), available at <http://www.righttofoodindia.org/orders/nov28.html>; *PUCL writ petition 196/2001* (Interim Order of Oct. 29, 2002), available at <http://www.righttofoodindia.org/orders/oct29.html>; see also OFFICE OF THE COMMISSIONERS OF THE SUPREME COURT OF INDIA, COMMISSIONER TO THE SUPREME COURT ON THE RIGHT TO FOOD: A BRIEF INTRODUCTION (2005).

<sup>4</sup> INDIA CONST. art. 21 ("No person shall be deprived of his life or personal liberty except according to procedure established by law.").

<sup>5</sup> See, e.g., *PUCL writ petition 196/2001* (Interim Order of Aug. 20, 2001); *PUCL writ petition 196/2001* (Interim Order of Sept. 17, 2001), available at <http://www.righttofoodindia.org/orders/sept17.html>.

<sup>6</sup> *PUCL writ petition 196/2001* (Interim Order of Oct. 7, 2004), available at <http://www.righttofoodindia.org/orders/oct704.html>; *PUCL writ petition 196/2001* (Interim Order of Apr. 29, 2004), available at <http://www.righttofoodindia.org/orders/apr2904.html>.

<sup>7</sup> *PUCL writ petition 196/2001* (Interim Order of Apr. 20, 2004), available at <http://www.righttofoodindia.org/orders/apr2004.html>.

<sup>8</sup> *Id.*

<sup>9</sup> *S.P. Gupta v. Union of India and Others*, (1981) Supp. S.C.C. 87; see also SHRISH MANI TRIPATHI, THE HUMAN FACE OF THE SUPREME COURT OF INDIA: PUBLIC INTEREST IN THE APEX COURT 61-63 (1993).

<sup>10</sup> *Francis Coralie Mullin v. Administrator*, (1981) 2 S.C.R. 516 (India).

<sup>11</sup> See TRIPATHI, *supra* note 9, at 61-63.

<sup>12</sup> *S.P. Gupta*, Supp. S.C.C. at 87 ("Where a legal wrong...is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right...and any such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court and, in case of breach of any fundamental right, in this Court under Article 32 seeking judicial redress.").

<sup>13</sup> *Id.*

<sup>14</sup> Interview with Colin Gonsalves, Executive Director, Human Rights Law Network, in New Delhi, India (Jan. 11, 2010).

<sup>15</sup> *PUCL writ petition 196/2001* (Interim Order of Apr. 27, 2004), available at <http://www.righttofoodindia.org/orders/apr2704.html>.

<sup>16</sup> *PUCL writ petition 196/2001* (Interim Order of Nov. 28, 2001), available at <http://www.righttofoodindia.org/orders/nov28.html>.

<sup>17</sup> *PUCL writ petition 196/2001* (Interim Order of Apr. 20, 2004), available at <http://www.righttofoodindia.org/orders/apr2004.html>.

<sup>18</sup> "Mid-Day Meal Scheme" (MDMS) is the popular name for the National Programme of Nutritional Support for Primary Education. See GOV'T OF INDIA, DEP'T. OF SCH. EDUC. & LITERACY, GUIDELINES OF NATIONAL PROGRAMME OF NUTRITIONAL SUPPORT EDUCATION (launched in Aug. 1995), available at <http://www.education.nic.in/mdm/mdm1995.asp> [hereinafter MDMS PROGRAM GUIDELINES].

<sup>19</sup> See *id.*

<sup>20</sup> See, e.g., Rheetika Khera, *Mid-Day Meals in Primary Schools: Achievements and Challenges*, ECON. & POL. WKLY, Nov. 18, 2006, at 4742.

<sup>21</sup> See MDMS PROGRAM GUIDELINES, *supra* note 18.

<sup>22</sup> Interview with Reetika Khera, Development Economist, Right to Food Campaign, in New Delhi, India (Jan. 11, 2010) (transcript on file with author).

<sup>23</sup> See RIGHT TO FOOD CAMPAIGN, MID-DAY MEALS: A PRIMER (2005), available at [http://www.righttofoodindia.org/mdm/mdm\\_campaignmaterials.html](http://www.righttofoodindia.org/mdm/mdm_campaignmaterials.html).

<sup>24</sup> For example, the Campaign launched a "country-wide 'day of action on mid-day meals' in April 2002" and spent several years monitoring, reporting, organizing, lobbying, and campaigning on the issue. See Press Release, Nationwide Action Day on April 9, 2002 (Apr. 9, 2002), available at [http://www.righttofoodindia.org/mdm/aday\\_pressrelease.html](http://www.righttofoodindia.org/mdm/aday_pressrelease.html).

<sup>25</sup> See SUPREME COURT COMMISSIONERS, 1ST REPORT OF THE COMMISSION (2002); SPECIAL REPORT OF THE COMMISSION (2003); 2ND REPORT OF THE COMMISSION (2003); 3RD REPORT OF THE COMMISSION (2003); 4TH REPORT OF THE COMMISSION (2003); 5TH REPORT OF THE COMMISSION (2004); FOLLOW-UP REPORT OF THE COMMISSION (2004); 6TH REPORT OF THE COMMISSION (2005); 7TH REPORT OF THE COMMISSION (2007); 8TH REPORT OF THE COMMISSION (2008), available at <http://www.sccommissioners.org/reports>.

<sup>26</sup> Khera, *supra* note 20, at 4742.

<sup>27</sup> See RIGHT TO FOOD CAMPAIGN, *supra* note 23.

<sup>28</sup> Honorable President of India, Shrimati Pratibha Devisingh Patil, Address to Parliament (June 4, 2009), available at <http://presidentofindia.nic.in/sp040609.html>.

<sup>29</sup> Alka Sirohi, Sec'y of the Ministry of Consumer Affairs, Food & Public Distrib., Dep't of Food & Public Distrib., *Proposed National Food Act: Concept Note of 4 June 2009*, D.O. No. 8-27/2009-BP-III (June 4, 2009), available at [http://www.righttofoodindia.org/data/concept\\_note\\_on\\_rtf\\_act\\_food\\_ministry\\_040709.pdf](http://www.righttofoodindia.org/data/concept_note_on_rtf_act_food_ministry_040709.pdf).

<sup>30</sup> Arati Jerath, *Food Security Bill: Face-Off Between Sonia and the government?*, INDIA TIMES, (Mar. 27, 2010), available at <http://timesofindia.indiatimes.com/india/The-stomach-for-a-fight/articleshow/5729782.cms>; *EGoM meet on April 5 to discuss draft Food Security Bill*, THE HINDU (Apr. 2, 2010), available at <http://beta.thehindu.com/news/national/article381524.ece?homepage=true>.

<sup>31</sup> Rahul Lahoti and Sanjay G. Reddy, *Right to Food Act: Essential but Inadequate*, THE HINDU, July 8, 2009.

<sup>32</sup> Draft National Food Security Bill, available at [http://www.righttofoodindia.org/data/egom\\_draft\\_bill2010.pdf](http://www.righttofoodindia.org/data/egom_draft_bill2010.pdf).

<sup>33</sup> Indeed, the Indian government's current assessment of the BPL population stands in stark contrast to the percentage of the population estimated by civil society to be poor or unable to access adequate levels of food. While the Indian government assesses the BPL population to be at 27.5 percent, the National Sample Survey Organization (NSSO) reports a far higher number of persons unable to access a basic nutritional intake. According to this report, 70.1 percent of persons in urban areas and 61.3 percent of persons in rural areas consume below the NSSO caloric intake norm. See NAT'L SAMPLE SURVEY ORG., MINISTRY OF STATISTICS AND PROGRAMME IMPLEMENTATION, PERCEIVED ADEQUACY OF FOOD CONSUMPTION IN INDIAN HOUSEHOLDS (2007).



<sup>34</sup> Nitin Sethi and Mahendra Kumar Singh, *Plan Panel Meet on Food Security Act Today*, TIMES OF INDIA (Apr. 17, 2010), available at <http://timesofindia.indiatimes.com/india/Plan-panel-meet-on-Food-Security-Act-today/articleshow/5823276.cms>.

<sup>35</sup> See Posting of Nick Robinson, Human Rights Law Network, to Law and Other Things, July 11, 2009, available at <http://lawandotherthings.blogspot.com/2009/07/right-to-food-and-implementation-act.html> (last visited Apr. 20, 2010); Jean Dreze, *A Grain of Good Sense*, OUTLOOK INDIA, July 20, 2009, available at <http://www.outlookindia.com/article.aspx?250480>.

<sup>36</sup> *Id.*; Food Security Act or Food Entitlement Act?, <http://devinder-sharma.blogspot.com/2010/03/food-security-act-or-food-entitlement.html> (Mar. 29, 2010, 10:35 am) (last visited Apr. 20, 2010).

<sup>37</sup> Letter to Dr. Manmohan Singh, Prime Minister of India, from the Right to Food Campaign (Mar. 22, 2010), available at [http://www.righttofoodindia.org/data/open\\_letter\\_from\\_right\\_to\\_food\\_campaignagainst\\_draft\\_national\\_food\\_security\\_act.pdf](http://www.righttofoodindia.org/data/open_letter_from_right_to_food_campaignagainst_draft_national_food_security_act.pdf).

<sup>38</sup> Ani, *NGOs protest proposed National Food Security Act*, GAEA TIMES, Apr. 17, 2010, available at <http://breakingnews.gaeatimes.com/2010/04/17/ngos-protest-proposed-national-food-security-act-21987/>.

<sup>39</sup> Interview with Biraj Patnaik, Principal Adviser to the Supreme Court Commissioners on the Right to Food, in New Delhi, India (Jan. 7, 2010) (on file with author).

<sup>40</sup> It is important that farmers groups and land rights activists be brought into the fold; farmers groups and lands rights movements

are not active participants in the Right to Food Campaign, and those struggling at the grassroots to produce food and earn a living from doing so remain disconnected. The majority of Indians derive their income from agricultural production and poverty is the main cause of hunger in India. There is enough food in India for everyone to eat adequately and nutritiously, but the inability to purchase food prevents people from doing so. The Right to Food Campaign should incorporate the needs and rights of farmers into its demands for a robust food security act. Despite the fact that food prices in India continue to climb to the highest level in a decade, see, e.g., Kartik Goyal and Manish Modi, *India Food Prices Climb 19.95%, the Most in 11 Years*, BLOOMBERG, Dec. 17, 2009, available at <http://www.bloomberg.com/apps/news?pid=20601091&sid=aqM3bqeJM E1U>, and have risen so steeply that the price increase is effecting not only the most impoverished but also the middle class, there has yet to be a national, grassroots movement to demand food security. See, e.g., Statement, Asian Human Rights Commission, India: Civil Society Demands Food Security to All (Nov. 16, 2009), <http://www.ahrchk.net/statements/mainfile.php/2009statements/2295/>; *Delhi: UP Farmers to Protest Sugarcane Prices*, ONEINDIA NEWS, Nov. 19, 2009, <http://news.oneindia.in/2009/11/19/delhi-up-farmers-to-protest-sugarcane-prices.html> (last visited Apr. 20, 2010).

<sup>41</sup> Interview with Dipa Sinha, Supreme Court Commissioner, in New Delhi, India (Jan. 21, 2010) (transcript on file with author) (stating that in the past year the Commission has received more reports of starvation deaths than ever, and that the level of urgency is reaching or is at the level of hunger and starvation that launched the case in 2001).

<sup>42</sup> *Id.*

## ENDNOTES: The Right to Education: A Multi-Faceted Strategy for Litigating before the Inter-American Commission on Human Rights *continued from page 24*

<sup>11</sup> The 2006 RFK Human Rights Laureate Sonia Pierre from the Dominican Republic received the RFK Center award for her work on behalf of Dominican children of Haitian descent who are denied nationality rights.

<sup>12</sup> *Supra* note 5.

<sup>13</sup> RFK CENTER, RIGHT TO EDUCATION OF AFRO-DESCENDANTS AND INDIGENOUS PEOPLES IN THE AMERICAS (2008), available at [http://www.rfkcenter.org/files/20090907\\_rt2ed\\_ENG.pdf](http://www.rfkcenter.org/files/20090907_rt2ed_ENG.pdf) (a report prepared for a thematic hearing before the Inter-American Commission on Human Rights) [hereinafter RIGHT TO EDUCATION REPORT].

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> RIGHT TO EDUCATION REPORT, *supra* note 13, at 48.

<sup>18</sup> The author and the RFK Center Right to Education team devised the strategy based on conversations with grassroots partners and on research developed by clinical partners from the UVA and Cornell Law Schools.

<sup>19</sup> The author will not discuss the procedural steps once an individual claim is filed before the Commission or once it eventually gets to the Inter-American Court.

<sup>20</sup> The author will not elaborate further in order not to infringe on client-partner confidentiality.

<sup>21</sup> RIGHT TO EDUCATION REPORT, *supra* note 13, at 58.

<sup>22</sup> American Declaration of the Rights and Duties of Man,

O.A.S. Res. XXX, Apr. 1948, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser.L/V/I.4 Rev. 9 (2003) [hereinafter American Declaration].

<sup>23</sup> American Convention, *supra* note 2, art. 26.

<sup>24</sup> *Id.* art. 21.

<sup>25</sup> Protocol of San Salvador, *supra* note 2, art. 13.

<sup>26</sup> *Id.* art. 16.

<sup>27</sup> *Id.* art. 3.

<sup>28</sup> Inter-American Democratic Charter art. 13, Sep. 11, 2001, 40 I.L.M. 1289.

<sup>29</sup> Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948).

<sup>30</sup> James L. Cavallaro & Emily Schaffer, Rejoinder, *Justice Before Justiciability: Inter-American Litigation and Social Change*, 39 N.Y.U. J. INT'L L. & POL. 345, 348 (2006) [hereinafter *Justice Before Justiciability*].

<sup>31</sup> American Convention, *supra* note 2, art. 26 ("The State Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires."). Although the full realization of economic, social, and cultural

rights is to be achieved progressively according to Article 26 of the American Convention, analyzed in connection with Article 1, the obligation to “adopt measures” is immediately binding upon States Parties.

<sup>32</sup> Although international human rights law does not define the scope of “primary education,” international organizations such as UNESCO have developed guidelines for understanding the concept. See Fons Coomans, *Content and Scope of the Right to Education as a Human Right and Obstacles to Its Realization*, in HUMAN RIGHTS IN EDUCATION, SCIENCE AND CULTURE: LEGAL DEVELOPMENTS AND CHALLENGES 183, 198 (Yvonne Donders & Vladimir Volodin eds., 2007) (“Primary education relates to the first layer of a formal school system: it usually begins between the ages of five and seven and lasts approximately six years, but in any case no fewer than four years.”).

<sup>33</sup> See American Convention, *supra* note 2, arts. 1, 24, 26; Protocol of San Salvador, *supra* note 2, arts. 1, 3, 13, 16.

<sup>34</sup> Milton García Fajardo v. Nicaragua, Case 11.281, Inter-Am. C.H.R., Report No. 100/01, OEA/Ser.L/V/II.114, doc. 5 rev. 1 ¶ 98 (2001).

<sup>35</sup> Protocol of San Salvador, *supra* note 2, art. 13.

<sup>36</sup> *Id.* art. 19(6).

<sup>37</sup> *Less as More*, *supra* note 6, at 225.

<sup>38</sup> Tara J. Melish, *Rethinking the “Less as More” Thesis: Supranational Litigation of Economic, Social and Cultural Rights in the Americas*, 39 N.Y.U. J. INT’L L. & POL. 171, 273 (2007).

<sup>39</sup> *Id.* at 267. See Panchito López Case, 2002 Inter-Am. Ct. H.R. (ser. C) No. 112, ¶ 255 (Sept. 2, 2004) (stating that Article 26 protects the right to health, education, and recreation but deciding the case only on violations of Articles 4 and 5); Yakye Axa Indigenous Cmty. v. Paraguay, 2002 Inter-Am. Ct. H.R. (ser. C) No. 125, ¶ 163 (June 17, 2005) (interpreting the right to health as protected under Article 26 to interpret Article 4); Yean & Bosico Case, 2005 Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 185 (Sept. 8, 2005) (using the right to education as protected in Article 26 to inform its interpretation of Article 19); Acevedo Jaramillo v. Peru, 2002 Inter-Am. Ct. H.R. (ser. C) No. 144, ¶ 285 (Feb. 7, 2006) (evaluating the effects of Article 26 violations in the reparations stage of proceedings).

<sup>40</sup> Sital Kalantry, Jocelyn E. Getgen & Steven Arrigg Koh, *Enhancing Enforcement of Economic, Social and Cultural Rights Using Indicators: A Focus on the Right to Education in the ICESCR*, 32 HUM. RTS. Q. 253, 257 (2010).

<sup>41</sup> RIGHT TO EDUCATION REPORT, *supra* note 13.

<sup>42</sup> See Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights, Oct. 5, 2007, Inter-Am. C.H.R., OEA/Ser.L/V/II.129, doc. 5, ¶¶ 30–32 [hereinafter Guidelines].

<sup>43</sup> Report on Indicators for Monitoring Compliance with International Human Rights Instruments, ¶ 7, U.N. Doc. HRI/MC/2006/7 (May 11, 2006).

<sup>44</sup> Kalantry, *supra* note 40, at 257. To learn more about this proposed methodology for using indicators to measure compliance with ESC rights, see *id.* at 259–310.

<sup>45</sup> Protocol of San Salvador, *supra* note 2.

<sup>46</sup> *Id.* arts. 13, 16.

<sup>47</sup> *Id.* art. 3; American Convention, *supra* note 2, arts. 1, 19, 24; Inter-American Convention on the Prevention, Punishment and

Eradication of Violence Against Women, Mar. 5, 1995, 33 I.L.M. 1534 [hereinafter Convention of Belém do Pará].

<sup>48</sup> American Convention, *supra* note 2, arts. 19, 26; Protocol of San Salvador, *supra* note 2, art. 13; Convention of Belém do Pará, *supra* note 46, art. 8.

<sup>49</sup> U.S. STATE DEP’T, 2009 HUMAN RIGHTS REPORTS: COLOMBIA (Mar. 11, 2010), available at <http://www.State.gov/g/drl/rls/hrrpt/2009/wha/136106.htm> [hereinafter STATE DEP’T REPORT].

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Marino Cordoba, AFRODES USA, Special Situation of Afro-Colombian IDPs: A Call for More International Solidarity, Presentation at the Conference: A Solution Oriented U.S. Policy to Address the Colombian Forced Displacement Crisis (Apr. 30, 2009), available at [http://www.wola.org/media/Marino%20Cordoba%20AFRODES%20IDP%20Presentation\\_043009.pdf](http://www.wola.org/media/Marino%20Cordoba%20AFRODES%20IDP%20Presentation_043009.pdf).

<sup>53</sup> RIGHT TO EDUCATION REPORT, *supra* note 13, at 57.

<sup>54</sup> STATE DEP’T REPORT, *supra* note 49.

<sup>55</sup> In Recognition of the Right of Black Colombians to Collectively Own and Occupy their Ancestral Lands, Law 70 of Colombia (1993) [hereinafter Black Community Law].

<sup>56</sup> See Luis Gilberto Murillo-Urrutia, *Contemporary Challenges in Colombia: An Afro-Colombian Perspective*, 1 J. PAN AFR. STUD. 135, 136, 141 (2007).

<sup>57</sup> RIGHT TO EDUCATION REPORT, *supra* note 13, at 1.

<sup>58</sup> *Id.* at 61.

<sup>59</sup> The author and the Cornell Human Rights Clinic team made the assessment after a feasibility interview with probable Afro-Colombian plaintiffs in Colombia in September 2009.

<sup>60</sup> STATE DEP’T REPORT, *supra* note 49.

<sup>61</sup> Gimena Sánchez-Garzoli, Special Concerns of Indigenous IDPs, Presentation at the Conference: A Solution Oriented U.S. Policy to Address the Colombian Forced Displacement Crisis (Apr. 30, 2009), available at [http://www.wola.org/media/GS\\_Special%20Concerns%20of%20Indigenous%20IDPs\\_043009.pdf](http://www.wola.org/media/GS_Special%20Concerns%20of%20Indigenous%20IDPs_043009.pdf).

<sup>62</sup> The author derived the assessment from interviews with several indigenous peoples’ leaders in Guatemala and Colombia on in different occasions in October and December 2007 in Guatemala and Colombia respectively and again in Colombia in September 2009.

<sup>63</sup> General Education Law of Colombia, Law 115 (1994) chap. III (Education for Ethnic Groups), arts. 55–63 (author’s translation) [hereinafter General Education Law].

<sup>64</sup> *Id.* art. 55 (Definition of Ethno-education).

<sup>65</sup> *Id.* art. 56 (Principles and Ends). Law 60 of 1993 was repealed by Law 715 of 2001.

<sup>66</sup> See POLITICAL CONST. COLOM. art. 68 (1991). DEFENSORÍA DEL PUEBLO COLOMBIA, EL DERECHO A LA EDUCACIÓN: EN LA CONSTITUCIÓN, LA JURISPRUDENCIA Y LOS INSTRUMENTOS INTERNACIONALES 58–59, 142 (2003) [hereinafter DEFENSORÍA 2003 REPORT].

<sup>67</sup> RIGHT TO EDUCATION REPORT, *supra* note 13, at 79.

<sup>68</sup> In December 2007, the author visited an indigenous university managed by CRIC.

<sup>69</sup> RIGHT TO EDUCATION REPORT, *supra* note 13, at 80.

<sup>70</sup> The author interviewed an ACIN spokesperson as part of the RFK Center and Cornell Human Rights Clinic delegation.

<sup>71</sup> See Rules of Procedure of the Inter-American Commission on Human Rights art. 66(1), 109th Sp. Sess. (2000), amended 126th Sess. (2006) available at <http://www.cidh.oas.org/Basicos/English/Basic18.RulesOfProcedureIACHR.htm>.

<sup>72</sup> In addition to drafting, legal analysis, and technical advice, the UVA School of Law International Human Rights Clinic and the Cornell Law School International Human Rights Clinic researched numerous primary, secondary, and tertiary sources. The Clinics also provided assistance in the design and implementation of the Right to Education Report. See RIGHT TO EDUCATION REPORT, *supra* note 13, at 48.

<sup>73</sup> Indigenous woman Angelica Macario from CERJ works with the RFK Center Laureate from Guatemala, Amilcar Mendez, and union leader Diego Escobar from Colombia partners with the RFK Center Laureate from Colombia, Berenice Celeyta.

<sup>74</sup> RIGHT TO EDUCATION REPORT, *supra* note 13, at 4.

<sup>75</sup> *Id.* at 48.

<sup>76</sup> *Id.* at 1.

<sup>77</sup> *Id.* at 46.

<sup>78</sup> *Id.* at 46, 47, 49–54.

<sup>79</sup> See U.N. Econ. Soc. Council [ECOSOC], Comm. on Econ., Soc. & Cultural Rights [CESCR], *Implementation of the International Covenant on Economic, Social and Cultural Rights, General Comment 13 on the Right to Education*, ¶ 6, U.N.Doc. E/C.12/1999/10 (Dec. 8, 1999), available at [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.1999.10.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.1999.10.En?OpenDocument).

<sup>80</sup> See PRINCETON UNIV. WOODROW WILSON SCH. OF PUB. & INT'L AFFAIRS, FREE TO LEARN: A RIGHTS BASED APPROACH TO UNIVERSAL PRIMARY EDUCATION IN KENYA 30 (2006), available at [http://www.princeton.edu/research/final\\_reports/f05wws591i.pdf](http://www.princeton.edu/research/final_reports/f05wws591i.pdf).

<sup>81</sup> RIGHT TO EDUCATION REPORT, *supra* note 13.

<sup>82</sup> See Rules of Procedure, *supra* note 71, art. 23.

<sup>83</sup> *Id.* art. 66.

<sup>84</sup> The author collaborated in different advocacy activities and exchanged information on various occasions with the Latin American Campaign on the Right to Education (CLADE) (<http://www.campanaderechoeducacion.org/>) and with the Right to Education Project (<http://www.right-to-education.org/>).

<sup>85</sup> The author maintained a line of communication and information exchange with UN Independent Expert on Minority Issues, Gay McDougall, providing her with the Report of findings on minorities and the right to education, attending meetings sponsored by her mandate, and inviting her to events related to the Right to Education Report.

<sup>86</sup> Among others, as a representative of the RFK Center, the author attended the Durban Review Conference for Latin America & the Caribbean in July 2008, the UN Forum on Minorities and the Right to Education in December 2008, and the Durban Review Conference in April 2009. At the conference in April 2009, the RFK Center facilitated the participation of one of its partners, Sonia Pierre from the Dominican Republic, and also coordinated advocacy and outreach efforts with CLADE and the World Campaign on the Right to Education (<http://www.campaignforeducation.org/>).

<sup>87</sup> Press Release, RFK Center, Experts, Advocates and Grassroots Leaders Convene in Colombia to Discuss the Right to Education (Sept. 11, 2009), available at <http://rfkcenter.org/node/369>.

<sup>88</sup> RFK Center work is based on the concept of human rights based approach, in which right-holders are empowered to be active participants in shaping policies and bringing duty-bearers accountable.

<sup>89</sup> Commissioners are political appointees elected by the OAS general assembly. For nature, composition, and membership of the Commission, see Rules of Procedure, *supra* note 70, arts. 1-10.

<sup>90</sup> RIGHT TO EDUCATION REPORT, *supra* note 13.

<sup>91</sup> *Id.*

## ENDNOTES: Realizing the Human Right to Water in Tanzania *continued from page 30*

<sup>41</sup> Household Budget Survey, *supra* note 10, at 6.

<sup>42</sup> Water Utilization (Control and Regulation) Act of 1974 (Dar es Salaam, United Republic of Tanzania).

<sup>43</sup> Water Utilization (Control and Regulation) Amdt. of 1981 (Dar es Salaam, United Republic of Tanzania).

<sup>44</sup> KARLHEINZ SPITZ & JOANNA MORENO, A PRACTICAL GUIDE TO GROUNDWATER AND SOLUTE TRANSPORT MODELING, 36-37, 62-63 (John Wiley and Sons 1996); JOHN B. SULLIVAN, JR. & GARY R. KRIEGER, CLINICAL ENVIRONMENTAL HEALTH AND TOXIC EXPOSURES, 14-15 (Lippincott Williams & Wilkins 2001).

<sup>45</sup> Water Laws (Miscellaneous Amendments) Act 8 of 1997, 192 (Dar es Salaam, United Republic of Tanzania).

<sup>46</sup> G. B. Luilo & P. J. Kabudi, *Inadequacies in Water Legislation for Water Resources Management: Experiences from Tanzania*, 1(1) J. OF WATER & ENV'T TECH. 1, 3 (2003).

<sup>47</sup> *Id.*

<sup>48</sup> NKONYA, *supra* note 4, at 247.

<sup>49</sup> G. B. Luilo & P. J. Kabudi, *supra* note 48.

<sup>50</sup> NKONYA, *supra* note 4, at 249.

<sup>51</sup> *Id.*

<sup>52</sup> Water for Drinking, Cooking, and Washing, *supra* note 32.

<sup>53</sup> *Id.*

<sup>54</sup> Ministry of Water and Livestock Development, National Water Sector Development Strategy: 2005–2015 3 (United Republic of Tanzania 2004).

<sup>55</sup> Kabudi, *supra* note 33, at 4-7.

<sup>56</sup> *Id.* at 4-4.

<sup>57</sup> NKONYA, *supra* note 4, at 252.

<sup>58</sup> Faustin Maganga, *Incorporating Customary Laws in Implementation of IWRM: Some Insights from Rufiji River Basin, Tanzania*, in PHYSICS AND CHEMISTRY OF THE EARTH PART A 995, 996 (2003).

<sup>59</sup> ELLEN CARLSSON, TO HAVE AND TO HOLD: CONTINUITY AND CHANGE IN PROPERTY RIGHTS INSTITUTIONS GOVERNING WATER RESOURCES AMONG THE MERU OF TANZANIA AND THE BAKGATLA IN BOTSWANA: 1925-2000, 101 (Almqvist & Wiksell International 2003).

<sup>60</sup> NKONYA, *supra* note 4, at 249.

<sup>61</sup> Household Budget Survey 2007, *supra* note 10, at 4.

<sup>62</sup> *Id.* at 5.

<sup>63</sup> Sarah Malloy-Good & Kristie Smith, Cost-Benefit Analysis of Improved Water and Sanitation for Women and Girls in Sub-Saharan Africa (March 2008) (unpublished paper, on file with Columbia University School of Social Work).

<sup>64</sup> See Kabudi, *supra* note 33, at 4-4.

<sup>65</sup> Homeless International, Tanzania, [http://www.homeless-international.org/standard\\_1.aspx?id=1:32599&id=0:276&id=0:262](http://www.homeless-international.org/standard_1.aspx?id=1:32599&id=0:276&id=0:262) (last visited April 11, 2010).

<sup>66</sup> UN Habitat, Statistical Overview, <http://www.unhabitat.org/categories.asp?catid=237> (last visited Apr. 11, 2010).

<sup>67</sup> WaterWiki, Access to Water in the Slums of the Developing World, [http://waterwiki.net/index.php/Access\\_to\\_Water\\_in\\_the\\_Slums\\_of\\_the\\_Developing\\_World](http://waterwiki.net/index.php/Access_to_Water_in_the_Slums_of_the_Developing_World) (last visited Apr. 14, 2010).

<sup>68</sup> Peter Gleick, *Basic Water Requirements for Human Activities: Meeting Basic Needs*, 21(2) INT'L WATER 83, 87 (1996).

<sup>69</sup> *Id.* at 84.

<sup>70</sup> *Id.* at 89.

<sup>71</sup> Maganga, *supra* note 58, at 997.

<sup>72</sup> *Id.*

<sup>73</sup> NKONYA, *supra* note 4, at 145-46.

<sup>74</sup> Marianne Kjellén, *Complementary Water Systems in*

*Dar es Salaam, Tanzania: The Case of Water Vending*, 16(1) WATER RESOURCES DEV. 143-54 (2002).

<sup>76</sup> Marianne Kjellén, *From Public Pipes to Private Hands: Water Access and Distribution in Dar es Salaam, Tanzania* (2006) (unpublished doctoral thesis, on file at Stockholm University), available at <http://urn.kb.se/resolve?urn=urn:nbn:se:su:diva-1212>.

<sup>77</sup> Water for Drinking, Cooking, and Washing, *supra* note 32.

<sup>78</sup> NAWAPO, *supra* note 29.

<sup>79</sup> George Mwita, *Tanzania: Solutions to Dar's Water Problems in the Pipeline*, INTER PRESS SERVICE NEWS AGENCY, available at <http://ipsnews.net/news.asp?idnews=47932> (last visited Apr. 11, 2010).

<sup>80</sup> Sarah McGregor, *Tanzania: Running Water Remains a Pipe Dream for Many*, INTER PRESS SERVICE NEWS AGENCY, available at <http://ipsnews.net/africa/nota.asp?idnews=42537/> (last visited Apr. 11, 2010).

<sup>81</sup> Kjellén, *supra* note 74.

## ENDNOTES: When Is the Past Not the Past? Reflections on Customary Law under South Africa's Constitutional Dispensation *continued from page 35*

same as those for a civil marriage or union, save that the marriage must be celebrated or entered into in terms of customary law. With respect to the RCMA as read with the Intestate Succession Act, the position is now the same as at common law, where all descendants of the deceased are now entitled to inherit in their individual capacities.

<sup>32</sup> Polygyny is the practice of having more than one wife at one time and is distinct from "polygamy," the practice of having more than one spouse at one time.

<sup>33</sup> Himonga & Bosch, *supra* note 4, at 306.

<sup>34</sup> *Id.* at 318.

<sup>35</sup> For a detailed discussion of the essence and difference between unofficial and official customary law, see Himonga & Bosch, *supra* note 4, at 319-31.

<sup>36</sup> *Id.* at 331.

<sup>37</sup> Repeal of the Black Administration Act and Amendment of Certain Laws Act 28 of 2005; Repeal of the Black Administration Act and Amendment of Certain Laws Act 8 of 2006; Repeal of the Black Administration Act and Amendment of Certain Laws Act 13 of 2007; Repeal of the Black Administration Act and Amendment of Certain Laws Act 7 of 2008; and Repeal of the Black Administration Act and Amendment of Certain Laws Act 20 of 2009.

<sup>38</sup> SA LAW COMMISSION, DISCUSSION PAPER 82 (PROJECT 90), THE HARMONISATION OF COMMON LAW AND INDIGENOUS LAW: TRADITIONAL COURTS AND THE JUDICIAL FUNCTION OF TRADITIONAL LEADERS (1999).

<sup>39</sup> SA LAW COMMISSION, PROJECT 90, CUSTOMARY LAW REPORT ON TRADITIONAL COURTS AND THE JUDICIAL FUNCTION OF TRADITIONAL LEADERS (2003).

<sup>40</sup> These groups include the national and provincial houses of traditional leadership, CONTRALESA, et al. See Pearlie Joubert, *Back to*

*the Dark Day*, MAIL AND GUARDIAN ONLINE, May 16 2008, <http://www.mg.co.za/article/2008-05-16-back-to-the-dark-day>.

<sup>41</sup> Although the Bill's preamble conveys the drafters' desire to fit the Bill within the Constitutional fold, the Bill contains several features that are problematic. Aninka Claasens identifies some of the more concerning features as the following: the failure provide for a meaningful community role in the adjudication process, traditionally one of the distinctive features of traditional courts; the presiding traditional leader is under no obligation to consult on any decision irrespective of their potential to throw an entire community into disharmony; and the presiding traditional leader is given wide powers to make parties perform some form of unpaid service for the benefit of the community. See Aninka Claasens, *What is Wrong with the Traditional Courts?*, MAIL AND GUARDIAN ONLINE, June 2 2008, <http://www.mg.co.za/article/2008-06-02-whats-wrong-with-the-traditional-courts-bill>.

<sup>42</sup> According to the Bill, the power to appoint and remove traditional leaders as presiding officers in traditional courts lies with the Minister of Justice and the provincial Premier, while making no provision for community participation. This fact, read against the failure of the bill to ensure community participation, could have resulted in grave consequences in the event that the traditional leader fall out of favor with the community or in the event that he himself would violate customary law.

<sup>43</sup> One of the issues leading to the bill failing to pass was the fact that there was little consultation of the affected rural communities whereas there were eight consultative workshops held with traditional authorities. See Pearlie Joubert, *supra* note 40.